

BETWEEN

AAN

APPLICANT

AND

AAO

SECOND APPLICANT

AND

ZZP

RESPONDENT

AND

ZZO

SECOND RESPONDENT

AND

ZZN

RESPONDENT

Date of Order:

16 March 2013

Referee:

Referee Robertshawe

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that ZZP, ZZO and ZZN as Trustees of the FT Family Trust are to pay to AAN and AAO the sum of \$362.89 on or before 30 March 2013.

Facts

[1] On 19 October 2010, AAN and AAO signed an Agreement for Sale and Purchase to buy the FT Family Trust's property at [address].

[2] AAN and AAO paid \$345,000.00. Settlement date was 31 March 2011.

[3] The property was advertised as being "architecturally designed". After the agreement was signed, but before the agreement was confirmed as unconditional, AAN and AAO discovered that this was not the case. After settlement, the AAN and AAO also discovered problems with the property, including some uncertified wiring, a leak in the roof, a leak in the en suite shower, drainage problems in the garden and a blocked sump in the garage.

[4] AAN and AAO believe that they have suffered losses of up to \$50,000.00 in the premium they paid for an architecturally designed house plus the repair costs for the leaks and drainage issues. They have filed a claim against the vendors for \$15,000.00, being the maximum jurisdiction of the Tribunal.

Law

[5] Clause 6 of the Agreement for Sale and Purchase and s 6 of the Contractual Remedies Act 1976 (CRA) apply.

[6] Clause 6 of the Agreement contains warranties given by the FT Family Trust on sale. Clause 6.2(5) includes an undertaking that where any work was done by the FT Family Trust at the property, any permit or consent required by law was obtained and complied with. AAN and AAO believe the electrical work done at the property was in breach of this, and claim remedial costs for this of \$558.00.

[7] Beyond the warranties in clause 6, the basic rule on the purchase of a property is “buyer beware”. It is for the purchaser to undertake investigations into the property and satisfy themselves that it is sound before purchase. Also, a vendor is not under obligations to disclose defects. However, anything that is said must be correct. By virtue of s 6 of the CRA, AAN and AAO may make a claim for compensation for any loss suffered as a result of a misrepresentation, provided the misrepresentation induced them to enter into the contract.

Issues

[8] To succeed in their claim, AAN and AAO have the onus of establishing:

- i. The electrical work at the property was carried out by the FT Family Trust in breach of clause 6.2(5) of the Agreement;
- ii. That they were induced to enter into the contract by the misrepresentation that the property was architecturally designed;
- iii. That they were induced to enter into the contract by the silence of the agent in not getting back to them in response to their query about any problems at the property, and that this silence amounted to a misrepresentation that there were no problems; and
- iv. That AAN and AAO have suffered losses of \$15,000.00 as a result.

Decision

[9] Having considered the matter over two hearings, in which I heard from the parties, an electrician and the real estate agents involved, I have made the following findings.

Was the electrical work at the property carried out by the FT Family Trust in breach of clause 6.2(5) of the Agreement?

[10] It was established that the FT Family Trust had undertaken faulty wiring at the property in breach of clause 6.2(5) of the Agreement. The cost of rectifying this was established to be \$362.89.

Were AAN and AAO induced to enter into the contract by the misrepresentation that the property was architecturally designed?

[11] Whilst it was clear that the property was incorrectly advertised, I was unable to make a finding that this mistake induced AAN and AAO to go ahead with the purchase. AAN and AAO were clear in their evidence that they wanted any property they owned to be architecturally designed. This was one of the reasons why they went to look at this property. However, AAN and AAO became aware of the mistake before they confirmed the Agreement. The Agreement was subject to a LIM condition. The date for confirmation of that was 10 November 2010. AAN was advised by the original owner of the property that it was not architecturally designed on or about 7 November 2010. AAN and AAO had by then viewed the LIM and discovered other flaws in the Council file. The plans on that file did not reflect the property as it was built in all respects. AAN and AAO discussed these matters with their lawyer. On 9 November, their lawyer drafted a letter raising the lack of architectural design and seeking compensation. On AAN's instructions, that letter was never sent. On 10 November, the solicitor confirmed the contract as unconditional. AAN and AAO stated that he had confirmed the contract believing he still had the right to pursue the matter at a later date under the Fair Trading Act 1986. That might be so as against the agent, but not as against the vendors.

[12] I have had regard to the importance that AAN and AAO placed on the fact of architectural design and their lack of understanding about the manner in which they have prejudiced a future claim by going ahead with the contract in full knowledge of the true position. However, having decided not to raise the matter once they became aware of it, they have also denied the vendors the opportunity to renegotiate the contract at the time, or, if the purchasers no longer wished to proceed, to return the deposit and put the property back on the market. The matter cannot now be revisited.

Were AAN and AAO induced to enter into the contract by the silence of the agent in not getting back to them in response to their query about any problems at the property?

[13] AAN and AAO were unable to establish that the agent who showed them around the property ever made a promise or representation that he would find out any problems from the owners and report them to AAN and AAO. The agent denied that this conversation took place. As the communication was oral, the matter was unable to be proved.

What losses can AAN and AAO claim?

[14] Having failed to establish inducement by the date of confirmation in relation to the architectural design, or misrepresentation by the agent in relation to any problems at the property, no compensation can be awarded for those matters.

[15] It is worth noting that had AAN and AAO not known about the lack of architectural design when they confirmed the contract, they would still have had difficulty proving a loss. The FT Family Trust presented evidence from a valuer stating that the lack of architectural design would have made no difference now to the value of the property given its age. AAN and AAO did not present any formal valuation evidence, and elected not to adjourn to a third hearing to provide this. The property was highlighted as being architecturally designed in the advertisement, so it is hard for the FT Family Trust to say it was not, at the very least, a selling point. However, in the absence of objective evidence establishing a way to value the loss, any award would have been limited to nominal damages.

Conclusion

[16] This leaves ZZP, ZZO and ZZN as Trustees of the FT Family Trust liable to pay for the electrical repairs arising from faulty wiring at the property, which was established to be \$362.89.